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2551

DEPARTMENT OF STATE
DEC 9 - 1947
TREATY BRANCH
OFFICE OF THE LEGAL ADVISER

Control 1443

December 5, 1947
7 p.m.

REURTELS 3569 Nov 6, 1997 July 18, DEPTEL 1141, July 15, DEPT views preferential shipping provision Italo-Argentine commercial agreement with concern because of possibility its application in contravention Art 82(c) peace treaty, which will be superseded, as concerns shipping, by navigation provisions FCN treaty. Requested bring this matter again informally attention FONOFI, emphasizing applicability peace treaty. DEPT suggests working through Lombardo because relationship question to FCN treaty.

Requested set forth also DEPT's position in minutes FCN treaty negotiation as follows to end of paragraph: In view acceptance Art XXI by ITAL delegation and ITALGOVT's previous statement (see EMBTEL 1940, July 12) that it considered use of word QUOTE preferably UNQUOTE in first sentence and exception in last sentence Art 32 Italo-Argentine agreement as precluding strict application preferential provision, DEPT concludes ITALGOVT does not consider itself obligated necessarily apply Article so as

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as to contravene provisions Art XXI. DEPT trusts, nevertheless, ITALGOVT will take advantage earliest opportunity eliminate such preferential provision.

DEPT feels that despite importance principle involved, no unnecessary action should be taken impeding Italy's obtaining Argentine assistance. Above approach reserves US position on principle, and further protest should be unnecessary unless step injurious US shipping interests taken. Since unlikely US shipping would participate in trade in any case, DEPT hopes no necessity further US action. DEPT considers only national and MFN treatment provisions Art 82(c) peace treaty and national treatment rule para one, Art XXI FCN treaty directly applicable present problem. Difference between Italo-Argentine and US-Norway agreements (DEPTEL 1940, July 12) is that shipping provisions former apply to all trade between two countries whereas latter only to shipment goods bought with Eximbank loan.

Without relating proposal to Argentine agreement, propose at convenient time amendment Art XXI as follows:

Para One.

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-3-, #2551, December 5, 7 p.m., to Rome.

Para One. Add words QUOTE or of any third country UNQUOTE after words QUOTE of such other HCP UNQUOTE at end of first clause. Add words QUOTE or of any third country UNQUOTE at end of paragraph.

Para Two. Add words QUOTE or vessels of any third country UNQUOTE after words QUOTE national vessels UNQUOTE.

~~[illegible]~~ Now considered ~~[illegible]~~ desirable establish both national and MFN treatment standards this subject matter.

LOVETT

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Control 2975

Rec'd December 10, 1947
11 a.m.

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FROM: Rome

TO: Secretary of State

NO: 3980, December 10, Noon

URGENT

DEPARTMENT OF STATE
Le/T
DEC 10 1947
TREATY BRANCH
OFFICE OF THE LEGAL ADVISER

Commercial Treaty No. 22

Article XXIV (one) word Nazionali has sense of domestic as opposed to foreign and therefore if retained might limit exception. First sentence pertinent paragraph URTEL 2456, November 25, is not clear to Embassy since exception without be limited to locally produced objects. If Italians agree to retain national at our request, is Embassy authorized state in minutes that word is not intended to limit exception to local by produced objects or positively that word is interpreted in sense "of national interest"?

Article V (two) as to definition of most favorable rate DEPTEL 2542, December 5 Embassy feels this is exceedingly complicated and hopes Department will reconsider some wording in Additional Protocol such as "rate not less favorable than most favorable rate applicable to a significant volume (percentage by value) of international financial transactions at time property was taken".

Present definition appears to have following shortcomings: (one) to be equitable arithmetic means should be weighted; (two) even if weighty, mean would be different from any of multiple rates already existing and would thus result either in establishing new rate for this purpose (objectionable as contrary to principle of eliminating multiple rates) or in forcing Italian Government to apply next higher rate which would doubtless be "most favorable rate" (to which Italians have already objected); and (three) it would

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appear

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appear that "exchange transactions" might well include trade under clearing reciprocity affairs or private compensations and even if applicable rates could always be determined. Doubtful that they might be purely nominal as at present under some clearing agreements and result in lower average rate under Department's formula.

Wording of definition is confusing. Appears that words "most favorable rate" near end of proposed paragraph should properly read "more favorable rates" (plural). Finally appears formula should be applicable also to article VII Paragraph Two.

DUNN

RB:ME

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